

KEYWORD: Guideline F

DIGEST: Applicant did not rebut the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASE NO: 15-06452.a1

DATE: 02/14/2017

DATE: February 14, 2017

In Re:	)	
	)	
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	)	
Applicant for Public Trust Position	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On March 28, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 21, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

## **The Judge's Findings of Fact**

Applicant is a high school graduate who expects soon to receive a college degree. Married, she has filed for divorce. She has two children, ages 10 and 20. In about 2003, Applicant purchased a house. After renters stopped making payments, she defaulted on her mortgage. She sought a modification of the loan, but it was not approved. In 2007, Applicant's debts were discharged through Chapter 7 bankruptcy.

Applicant filed for Chapter 13 bankruptcy protection in 2013, her liabilities including about \$64,000 in taxes for 2005 to 2010. The court dismissed this action on the ground that Applicant could not be expected to complete the payment plan. In June 2015, Applicant filed for Chapter 7 bankruptcy, her debts including over \$64,000 in back taxes owed to the IRS. Much of Applicant's debt was discharged the following September. However, Applicant's student loan debts and her back taxes were not discharged.

Applicant's delinquent tax problem grew out of her failure to have enough money withheld from her pay. She tried to use a company to assist her, but she discovered that they were doing nothing to resolve her tax debts. In about 2012, Applicant and her husband separated, due to his alcoholism, abuse, and poor employment history. He has provided no financial support to Applicant. Applicant incurred medical expenses on behalf of her father and her son. Applicant is working with a money management company to organize her finances and pay her debts. She has used credit to excess and has not maintained a budget, both of which contributed to her financial problems.

Applicant did not address her tax problems for several years, as she was focusing on caring for her family and her difficulties with her husband. She stated that her tax debt, as of September 2016, was about \$24,000, although she did not provide corroboration. In March 2016, she instructed her employer to deduct \$500 each month to pay her delinquent taxes. The Judge found that Applicant currently owes no funds for tax years prior to 2010.

Applicant enjoys a good reputation for diligence, reliability, and professionalism. She was commended for her contributions to mission accomplishment.

## **The Judge's Analysis**

The Judge noted circumstances outside Applicant's control that affected her finances, such as her divorce and medical expenses. He also noted that she had made some tax payments over the years. However, he concluded that the adverse evidence was more significant than the favorable. He cited to a history of tax debt going back to 2005 and to evidence that, as recently as 2014 and 2015, Applicant had underpaid her taxes by about \$20,000.

In the whole-person analysis, the Judge noted Applicant's educational attainments, her having worked on a DoD project for many years, her clean criminal record, etc. He cited again to

the unfortunate circumstances that affected her finances. However, he concluded that this positive evidence was not enough to outweigh her history of tax delinquency.

### **Discussion**

Applicant cites to her favorable evidence, such as the medical treatment for her relatives, her difficulties with her husband, her effort to resolve her taxes, etc. The Judge made findings about the matters that Applicant has cited. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination “may be granted only when ‘clearly consistent with the interests of the national security.’” *See, e.g.*, ADP Case No. 12-04343 at 3 (App. Bd. May 21, 2013). *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

### **Order**

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan  
Michael Y. Ra’anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board